

ment shall indicate by whom the military judge was detailed. The Secretary concerned may require that the order be reduced to writing.

(3) *Military judge from a different armed force.* A military judge from one armed force may be detailed to a court-martial convened in a different armed force when permitted by the Judge Advocate General of the armed force of which the military judge is a member. The Judge Advocate General may delegate authority to make military judges available for this purpose.

(c) *Counsel.*

(1) *By whom detailed.* Trial and defense counsel, assistant trial and defense counsel, and associate defense counsel shall be detailed in accordance with regulations of the Secretary concerned. If authority to detail counsel has been delegated to a person, that person may detail himself or herself as counsel for a court-martial.

(2) *Record of detail.* The order detailing a counsel shall be reduced to writing and included in the record of trial or announced orally on the record at the court-martial. The writing or announcement shall indicate by whom the counsel was detailed. The Secretary concerned may require that the order be reduced to writing.

(3) *Counsel from a different armed force.* A person from one armed force may be detailed to serve as counsel in a court-martial in a different armed force when permitted by the Judge Advocate General of the armed force of which the counsel is a member. The Judge Advocate General may delegate authority to make persons available for this purpose.

Rule 504. Convening courts-martial

(a) *In general.* A court-martial is created by a convening order of the convening authority.

(b) *Who may convene courts-martial.*

(1) *General courts-martial.* Unless otherwise limited by superior competent authority, general courts-martial may be convened by persons occupying positions designated in Article 22(a) and by any commander designated by the Secretary concerned or empowered by the President.

Discussion

The authority to convene courts-martial is independent of rank and is retained as long as the convening authority remains a commander in one of the designated positions. The rule by which

command devolves are found in regulations of the Secretary concerned.

(2) *Special courts-martial.* Unless otherwise limited by superior competent authority, special courts-martial may be convened by persons occupying positions designated in Article 23(a) and by commanders designated by the Secretary concerned.

Discussion

See the discussion of subsection (b)(1) of this rule. Persons authorized to convene general courts-martial may also convene special courts-martial.

(A) *Definition.* For purposes of Articles 23 and 24, a command or unit is “separate or detached” when isolated or removed from the immediate disciplinary control of a superior in such manner as to make its commander the person held by superior commanders primarily responsible for discipline. “Separate or detached” is used in a disciplinary sense and not necessarily in a tactical or physical sense.

Discussion

The power of a commander of a separate or detached unit to convene courts-martial, like that of any other commander, may be limited by superior competent authority.

(B) *Determination.* If a commander is in doubt whether the command is separate or detached, the matter shall be determined:

(i) In the Army or the Air Force, by the officer exercising general court-martial jurisdiction over the command; or

(ii) In the Naval Service or Coast Guard, by the flag or general officer in command or the senior officer present who designated the detachment.

(3) *Summary courts-martial.* See R.C.M. 1302(a).

Discussion

See the discussion under subsection (b)(1) of this rule.

(4) *Delegation prohibited.* The power to convene courts-martial may not be delegated.

(c) *Disqualification.*

(1) *Accuser.* An accuser may not convene a general or special court-martial for the trial of the person accused.

Discussion

See also Article 1(9); 307(a); 601(c). However, see R.C.M. 1302(b) (accuser may convene a summary court-martial).

(2) *Other.* A convening authority junior in rank to an accuser may not convene a general or special court-martial for the trial of the accused unless that convening authority is superior in command to the accuser. A convening authority junior in command to an accuser may not convene a general or special court-martial for the trial of the accused.

(3) *Action when disqualified.* When a commander who would otherwise convene a general or special court-martial is disqualified in a case, the charges shall be forwarded to a superior competent authority for disposition. That authority may personally dispose of the charges or forward the charges to another convening authority who is superior in rank to the accuser, or, if in the same chain of command, who is superior in command to the accuser.

Discussion

See also R.C.M. 401(c).

(d) *Convening orders.*

(1) *General and special courts-martial.* A convening order for a general or special court-martial shall designate the type of court-martial and detail the members and may designate where the court-martial will meet. If the convening authority has been designated by the Secretary concerned, the convening order shall so state.

Discussion

See Appendix 6 for a suggested format for a convening order.

(2) *Summary courts-martial.* A convening order

for a summary court-martial shall designate that it is a summary court-martial and detail the summary court-martial, and may designate where the court-martial will meet. If the convening authority has been designated by the Secretary concerned, the convening order shall so state.

Discussion

See also R.C.M. 1302(c).

(3) *Additional matters.* Additional matters to be included in convening orders may be prescribed by the Secretary concerned.

(e) *Place.* The convening authority shall ensure that an appropriate location and facilities for courts-martial are provided.

Rule 505. Changes of members, military judge, and counsel

(a) *In general.* Subject to this rule, the members, military judge, and counsel may be changed by an authority competent to detail such persons. Members also may be excused as provided in subsections (c)(1)(B)(ii) and (c)(2)(A) of this rule.

Discussion

Changes of the members of the court-martial should be kept to a minimum. If extensive changes are necessary and no session of the court-martial has begun, it may be appropriate to withdraw the charges from one court-martial and refer them to another. See R.C.M. 604.

(b) *Procedure.* When new persons are added as members or counsel or when substitutions are made as to any members or counsel or the military judge, such persons shall be detailed in accordance with R.C.M. 503. An order changing the members of the court-martial, except one which excuses members without replacement, shall be reduced to writing before authentication of the record of trial.

Discussion

When members or counsel have been excused and the excusal is not reduced to writing, the excusal should be announced